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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,334	10/17/2003	Anthony Wong	20341-72629	2290
23643	7590	11/02/2005	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			VERBITSKY, GAIL KAPLAN	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/688,334	WONG, ANTHONY	
	Examiner	Art Unit	
	Gail Verbitsky	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/20/03</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Claim Objections*

1. Claims 12-16 are objected to because of the following informalities: Perhaps applicant should replace the terms "act(s)" with the term —steps—in order to clearly describe the invention. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2, 5, 10-12, 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Crossley (U.S. 20050080354).

Crossley discloses in Fig. 2 a device in the field of applicant's endeavor comprising a housing 21 storing an electronics, an IR sensor received in a probe 36, a light source (LED) 42-43 adjacent the probe to illuminate the area around the probe so as to improve visibility. The light source can be activated by an illumination switch 26. It is inherent, that the user should activate both power switch 24 and the illumination switch 26 to provide the power to both switches. It is also inherent, that the LED has a cover) light cover which is at least translucent (substantially translucent) to allow the light to shine through the cover.

The method steps will be met during the normal operation of the device stated above.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Newman.

Newman discloses in Fig. 3 a device (combined otoscope and ear thermometer) comprising a housing storing an electronics, a probe (portion 106), an illuminating source 112 illuminating a target (tympanic membrane) through an opening and thus, inherently, an area around the probe, the illuminating source 112 is adjacent to the probe, an IR sensor arranged in the opening. It is inherent, that the device, and thus, the illuminating source 112 is activated by a user.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains: Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crossley in view of Weiss et al. (U.S. 5829878) [hereinafter Weiss].

Crossley discloses the device as stated above.

Crossley does not explicitly teach an audible alarm or flashing light, as stated in claims 13-14.

Weiss discloses a thermometer. Weiss teaches that a use can selectively activate either flashing display or a beeper (sound/ audible alarm) to indicate that the measurements are complete.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Crossley, so as to have either flashing

light, or an audible alarm, as taught by Weiss, so as to accommodate to the user with low vision or the user with hard of hearing problem.

7. Claims 3-9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. (U.S. 20030171655) [hereinafter Newman] in view of Twentier (U.S. 3949740).

Newman discloses in Fig. 3 a device (combined otoscope and ear thermometer) comprising a housing, a probe (portion 106), an illuminating source 112 illuminating a target (tympanic membrane) through an opening and thus, inherently, an area around the probe, the illuminating source 112 is adjacent to the probe, an IR sensor arranged in the opening. It is inherent, that the device, and thus, the illuminating source 112 is activated by a user.

Newman does not explicitly teach a translucent ring shaped probe cover, the probe cover which covers both, the illuminating source and at least a portion of the probe, as stated in claims 3-9 and 16.

Twentier teaches a disposable probe cover/ speculum appropriate for the tympanic thermometer and the otoscope. This would imply, that the otoscope illuminating light would shine through the speculum, and the speculum would allow the IR light through. This would also imply, that, if, both the illuminating source and the IR inside the probe and adjacent to the probe from inside, the speculum would cover both, the illuminating source and the IR and that the speculum would allow both, visible and IR light through.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Newman, so as to have a speculum, as taught by Twentier, which allows to transmit both, the visible and IR light, in order to provide a hygienic protection from contamination when the probe is used with a plurality of patients.

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The method steps will be met during the normal operation of the device stated above.

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

**Conforti U.S. 6886979** discloses a thermometer with an illuminating source being a LED.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

*Gail Verbitsky*  
*Primary Patent Examiner, TC 2800*



October 24, 2005